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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,867	04/13/2004	Philip Samuel	14640.1USWI	2669
23552	7590	12/01/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			OH, TAYLOR V	
			ART UNIT	PAPER NUMBER
			1625	

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/822,867

Applicant(s)

SAMUEL ET AL.

Examiner

Taylor Victor Oh

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1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**Final Rejection**

**The Status of Claims**

Claims 1-8 are pending.

Claims 1-8 are rejected.

**Claim Rejections - 35 USC § 102**

1. Applicants' argument filed 9/11/2006 have been fully considered but they are not persuasive.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The rejection of Claims 1 and 4-5 under 35 U.S.C. 102(b) as being anticipated clearly by Clouatre et al (6,447,807) has been maintained due to the failure to modify the claims.

**Claim Rejections - 35 USC § 103**

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**The rejection of Claims 1-8 under 35 U.S.C. 103(a) as being unpatentable over Clouatre et al (6,447,807) in view of Moffett et al (US 5,656,314).**

The rejection of Claims 1-8 under 35 U.S.C. 103(a) as being unpatentable over Clouatre et al (6,447,807) in view of Moffett et al (US 5,656,314) has been maintained with reasons of record on 6/26/06.

**Applicants' Argument**

- I. Applicants argue the following issues:
  - a. Clouatre et al does not disclose forming complexes of HCA, nor tri-, tetra, or penta metal complex salts of HCA ;
  - b. None of the prior art disclose forming complexes of HCA, nor tri-, tetra, or penta metal complex salts of HCA;
  - c. There is no suggestion to combine the Clouatre's et al solid form of KHCA, which are encased to protect against humidity, with Moffitt's liquid form which is not suitable for making tablets because of its high acidity and stability problems;

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- d. Clouatre's et al and Noffitt, even if combined, do not teach or suggest an HCA salt that is stable to environmental moisture without decomposing and acid-stable without lactonization, thereby lacking in a reasonable expectation of success.

The applicants' argument have been noted, but these arguments are not persuasive.

First, with respect to the first and second arguments, the Examiner has noted applicants' argument. However, the functional language "complex" can be defined as composed of interconnected or interwoven parts: composite, according to the Webster's II New Riverside University Dictionary (see page. 291). There is uncertainty in the functional language "complex" as to what it may mean without the definitive, structured chemical formula, which is described in the claim 1. From this aspect, it is still plausible that the primary prior art Clouatre et al does teach the claimed invention since it does describe the method for making the potassium and sodium salts of hydroxycitric acid and mixtures thereof workable, non-hygroscopic and non-reactive in acidic media by encasement as shown in example 6 (see col. 7, lines 55-63) below:

Ingredient	Weight	Percent	1 Kg Batch
1. Aqueous Potassium Hydroxycitrate	500 gm	62.5%	0.63
2. Calcium Carbonate	50 gm	6.25%	0.06
3. Potassium Carbonate	50 gm	6.25%	0.06
4. Anhydrous Lactose	150 gm	18.75%	0.19
5. Cellulose Acetate Phthalate Acetate	50 gm	6.25%	0.06
Total	800 gm	100.00%	100.00

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Furthermore, the primary prior art Clouatre et al elaborates that the one skilled in the art can make other non-salts of hydroxycitric acid, e.g., calcium and magnesium and various mixtures of the known salts, amenable to stable inclusion in liquid acidic formulation (see col. 9 ,lines 1-5). Therefore, it would have been obvious to the skilled artisan in the art to be motivated to produce various mixtures of the known salts of the hydroxycitric acid. Thus, the applicants arguments are not persuasive.

Second, with respect to the third and fourth arguments, the Examiner has noted applicants' argument. However , regardless of the presence of environmental moisture during the process of making hydroxycitrate , the Clouatre et al expressly discloses that hydroxycitrate can be mixed into a liquid acidic drink formulation and acidic snack bars, whereas Moffitt's liquid form can be suitable for making both snake bars and beverages (see col. 6 ,lines 60-65). Furthermore, regardless of producing the wet or dry formulation in the prior art , it is well-known in the case law that a dry formation is not patentable over a wet formulation. In re Nelson, 97 F. 2d 601 (C.C.P.A. 19\_). From the above, it follows that it would have been obvious to the skilled artisan in the art to be motivated to incorporate Moffett's et al method of isolating hydroxycitric acid from the Garcinia water extract into the Clouatre et al process in order to produce various mixtures of the known salts of the hydroxycitric acid for the purpose of making both snake bars and beverages from the raw materials.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas McKenzie can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Taylor Victor Oh, MSD, LAC  
Primary Examiner  
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11/24/06